

(b) In evaluating applications for renewal of Plan acceptance, HUD will take into consideration such reliable evidence, as is made available to the Department, of a Plan issuer's failure to fulfill its obligations. Where HUD has credible evidence of a Plan issuer's failure to correct covered homeowner problems, or there are justifiable homeowner complaints about untimely problem resolution by a Plan issuer, HUD will consider this as cause for termination of a Plan's acceptance and as grounds for initiation of sanctions against a Plan issuer or insurance backer, in accordance with 2 CFR part 2424. If HUD proposes to terminate a Plan's acceptance, the issuer of the Plan will be advised of the reason therefore, and the procedural safeguards of 2 CFR part 2424 will apply.

(c) Unless renewed, Plan acceptance by HUD expires automatically on the second anniversary date of acceptance. The Plan issuer must apply for acceptance renewal at least two months, but no more than three months, in advance of expiration to avoid automatic acceptance termination. Prior acceptance of a Plan will be continued beyond the date of automatic acceptance termination only by a written notification to the Plan issuer and only if the delay is caused by a lack of timely HUD processing of a renewal application. HUD will not extend the expiration date of a prior Plan acceptance if the Plan issuer has negligently provided incomplete information with its renewal application.

(d) After a Plan has been accepted by HUD, there shall be no change in, or modification to, its provisions, or in its insurance backers or insurance contract(s), without prior written HUD acceptance of such change or modification, except that changes mandated by other applicable laws may not require HUD's prior approval. A violation of this condition may be cause for termination of a Plan's acceptance, and may be grounds for initiation of sanctions against the Plan issuer, in accordance with 2 CFR part 2424. Insofar as practicable, HUD will respond to a Plan issuer's request for acceptance of a change within 30 days of receipt of the request. Plan acceptance by HUD will be for a two-year period.

(e) Requests for initial HUD acceptance or renewal of acceptance of a Plan should be made to the Deputy Assistant Secretary for Single Family Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Requests must be accompanied by information and documentation evidencing Plan compliance with § 203.204. Acceptability of Plans will be determined by the Deputy Assistant Secretary for Single Family Housing who will notify applicants of his or her determination. If a Plan is rejected, the applicant will be advised of the reason for rejection. The applicant may appeal the rejection to the Assistant Secretary for Housing, at the above address, stating specifically why the Plan should be approved. The Assistant Secretary (whose decision is final) will, within a reasonable time, advise the applicant whether the rejection will be upheld or reversed. Each HUD field office will be advised of Plans determined to be acceptable, or Plans that have been rejected.

(f) Existing Plans will be allowed a grace period of 9 months commencing from November 6, 1990 to make the necessary adjustments to comply with the provisions and requirements of § 203.200 to § 203.209.

(g) Each Plan issuer must submit a written certification addressed to the Deputy Assistant Secretary for Single Family Housing, 451 Seventh Street, SW., Washington, DC 20410, no later than three weeks before the anniversary date of the Plan's acceptance by HUD, that the insurance company backing its Plan is still an insurance carrier approved by the State insurance commission (or the equivalent entity) in each jurisdiction in which the Plan is offered, or is still a Risk Retention Group meeting the criteria of § 203.208 of this part.

(Approved by the Office of Management and Budget under control number 2502-0343)

[55 FR 41021, Oct. 5, 1990, as amended at 72 FR 73495, Dec. 27, 2007]

§ 203.203 Issuance and nature of insured 10-year protection plans.

(a) Plans may be issued:

(1) By a builder, warranty company, insurance company, or Risk Retention

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Group (see 15 U.S.C. 3901a(4)(A)–(H) (Supp. IV 1986); or

(2) By a State that guarantees the builder's performance and the State's continuing financial backing throughout the Plan's coverage period.

(b) All Plans must have insurance backing unless backed by the full faith and credit of a State.

(c)(1) Plans backed by the full faith and credit of a State must be in compliance with § 203.200 through § 203.202, § 203.204 through § 203.206, and § 203.209 to be acceptable to HUD. HUD will evaluate these Plans to ensure their compliance with these sections.

(2) HUD will not accept Plans backed by a State agency or a State insurance guaranty fund unless HUD is assured that the full faith and credit of the State is pledged to satisfy any and all obligations of the State agency or guaranty fund that may arise in connection with its financial backing of a Plan.

(d) The functions of a Plan issuer and an insurance backer may be performed by a single corporate entity.

§ 203.204 Requirements and limitations of a plan.

In addition to complying with the criteria set out in § 203.202 and § 203.205, for a Plan to be acceptable to HUD, it must meet the following requirements:

(a) A Plan must assure timely resolution of homeowners' complaints or claims covered under § 203.205. Warranties set forth in a Plan must comply with section 2301(a)(1)–(13) of the Magnuson-Mass Warranty-Federal Trade Commission Improvement Act (15 U.S.C. 2301–2312) along with the requirements and criteria set out in this section.

(b) The entire cost to the homeowner for Plan coverage must be prepaid by the builder, or the Plan issuer must give irrevocable coverage, at the time of settlement. In the case of optional coverage beyond the coverage required under § 203.205, the cost for the optional coverage may be paid by either the builder or the homeowner.

(c) Unexpired Plan coverage must be automatically transferred, without additional cost, to subsequent homeowners.

(d) Issued Plan coverage must be noncancellable by a Plan issuer or by its insurance backer(s).

(e) Exclusions from Plan coverage must not defeat coverage objectives stated in § 203.202 and § 203.205 and must permit normal homeowner use of the covered property, including normal maintenance and emergency property protection measures.

(f) Unless prohibited by applicable law, Plans must, at a minimum, stipulate that all homeowner complaints covered by a Plan, including those regarding construction deficiencies and structural defects claims, will be settled in the amount of their actual cost to correct or for the original sales price of the property, whichever is the lesser, subject to a deductible not to exceed a total of \$250 for all claims filed by a homeowner during the first two years of coverage and not to exceed a maximum of \$250 per claim during the third through the tenth year of coverage.

(1) In the case of claims filed by a condominium association, the deductible is limited to \$250.00 per claim for each affected unit in the structure, not to exceed a maximum of \$5,000.00 where the claim relates to the same event that affected several units. Recurrent claims for structural defects occasioned by a common cause shall be subject to the payment of no more than one deductible. In addition, a Plan covering a condominium must provide the condominium association with an additional warranty that allows for claims by homeowners involving the common elements of the building.

(2) A homeowner shall be liable for a deductible only if a builder defaults on warranty performance and the Plan issuer has to make the covered corrections. When the builder performs corrections under the builder's warranty, no deductible that may be included in the Plan is applicable.

(g) In the event of any dispute regarding a homeowner complaint or structural defect claim, Plans must, unless prohibited by applicable law, provide for binding arbitration proceedings arranged through a nationally recognized dispute settlement organization. The sharing of arbitration charges shall be as determined by the